

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

INTERLOCUTORY APPLICATION. No. 2218/2022

In

CP(IBC)No. 2517/MB/C-II/2018

*Application filed under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016.*

In the matter of

Mr. Devesh Raminklal Thakker

Residing at: Flat No. 101, Simran Park,
Plot No. 619, Behind City Tower,
Ulhasnagar, Maharashtra-421003.

...Applicant

v/s

**Arun Kapoor, Resolution Professional,
Monarch Brookefields LLP,**

Having his address at: G-601, Army Co-operative
Housing Society, Sector-09, Nerul (East),
Navi Mumbai, Maharashtra-400706.

...Respondent

In the matter between:

Capri Global Capital Limited

.... Financial Creditor

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT II

I. A. No. 2218/2022

In
CP No. 2517/MB/C-II/2018

v/s

Monarch Brookfields LLP

...Corporate Debtor

Order Pronounced on: - 19.12.2023

Coram:

Shri. Anil Raj Chellan : **Member (Technical)**

Shri. Kuldip Kumar Kareer : **Member (Judicial)**

Appearances (in Physical Mode) :

For the Applicants : Adv. Abhishek Adke a/w Adv. Sagar Vichare.

For the Respondents : Adv. Amir Arsiwala a/w Adv. Vidit Divya Kumar.

ORDER

Per: Shri. Kuldip Kumar Kareer, Member Judicial.

1. This is an application filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('Code') impugning the rejection of his claim by the Respondent as also praying for directions to the Respondent, who is the Resolution Professional of the Corporate Debtor,

inter-alia, to accept the claim of the Applicant worth Rs. 50,39,125/- and to include his claim with respect to Flat No.603 in the list of creditors of the Corporate Debtor. The Applicant herein has also sought for the relief to condone the delay, if any, in filing the present application.

Case of the Applicant in brief:

2. The Applicants had purchased a Flat bearing No. 603, admeasuring 32.289+9.187 sq.mtrs (carpet) on the 06th Floor of the Building known as “Arizona”, constructed by the Corporate Debtor on Plot No. 03, situated at Sector 20, Kalamboli, Navi Mumbai for a total consideration of Rs. 27,00,000/- (Rupees Twenty-Seven Lakhs Only) vide Agreement for Sale dated 13th January, 2016 bearing registration no. PVL2-424-2016.

3. By an Order dated 27th September, 2019 passed by this Hon’ble Tribunal, the Corporate Insolvency Resolution Process (‘CIRP’) was initiated against the Corporate Debtor. The Applicant had filed his claim on 06th December, 2019 in Form CA under Regulation 8A of the CIRP Regulations for a sum of INR 50,39,125/- (Rupees Fifty Lakhs, Thirty-Nine Thousand, One Hundred and Twenty-Five only). The then Resolution Professional Mr. S. Gopalkrishnan had rejected the claim of the Applicant vide E-mail dated December 16, 2019 on the ground that the Applicant had not provided the Bank statement. In the aforementioned e-mail, the then RP had requested

the Applicant to provide the bank statement, payment receipt, allotment letter and ID proof.

4. Thereafter, the then RP was replaced by the present Respondent by an Order dated 03rd August, 2021.

5. Being aggrieved by the impugned E-mail, the Applicant is constrained to file the present application challenging the same. Hence, this Application.

6. **Reply of the Respondent:** The Respondent has filed his Reply in the above-captioned matter on Affidavit dated 01st October, 2022. The contentions placed by the Respondent are briefly stated as under:

- I. The erstwhile Resolution Professional had taken out an advertisement for inviting claims on 24th November, 2019. The time limit to file claim within 90 days as per Regulation 12 of CIRP Regulations had expired on 22nd February, 2020. However, since the Applicant had filed his claim in Form CA on 06th December, 2019 under Regulation 8A of the CIRP Regulations, the claim of the Applicant, in the opinion of the Respondent, is within time.
- II. The reason for rejection of the Applicant's claim by the erstwhile Resolution Professional was that the claimant failed to provide the proof of payment allegedly made by him to the Corporate Debtor in respect of the allotment of a flat in a building constructed by the Corporate Debtor. Further, in this regard, the Respondent herein and

the erstwhile Resolution Professional were unable to proceed with admitting the claim as their powers are only restricted to collating and verifying the claims on the basis of the documentary evidence provided by the Creditors. Hence, due to lack of documentary evidence provided by the Applicant, the claim was rightly rejected by the erstwhile Resolution Professional and the present Respondent.

- III. The Respondent submits that the resolution plan for the revival and rehabilitation of the Corporate Debtor has already been approved by the Committee of Creditors and now, the application for approval of the resolution plan by the Adjudicating Authority u/s 31 of the Code is currently pending before this Hon'ble Tribunal in I.A. No. 70 of 2022. Therefore, the Respondent submits that the present application has been filed with an intent of derailing the CIRP of the Corporate Debtor and approval of the resolution plan by this Hon'ble Tribunal.
- IV. The Applicant has alleged that the Respondent has completely ignored the agreement for sale dated 13th January, 2016 in favour of the Applicant. In this regard, the Respondent submits that even considering the sale agreement executed between the Applicant and the Corporate Debtor, the Applicant has failed to obtain a no-objection certificate from Capri Global Capital Limited in pursuance of the Mortgage Deed dated 29th December, 2013 which was executed much prior to the date of sale agreement referred to above.

Therefore, Capri Global Capital Limited already has a claim in respect of the said Flat being one of the properties mortgaged with it.

ANALYSIS AND FINDINGS

7. We have heard the learned counsels for both the parties and perused the record.

8. It is the case of the Applicant that the Resolution Professional had wrongly rejected the claim of the Applicant on the ground that the Applicant had not provided a copy of the bank statement. According to the Counsel for the Applicant, the Resolution Professional ('RP') of the Corporate Debtor has failed to appreciate the copy of the Agreement for Sale dated 13.01.2016 furnished by the Applicant to the Respondent along with the Claim Form dated 06.12.2019. Counsel for the Applicant submits that the Resolution Professional was informed that the consideration for the said flat was paid in cash. Yet, the RP proceeded to reject the claim of the Applicant for want of a bank statement. Therefore, according to the Ld. Counsel for the Applicant, the RP is in clear error in rejecting the claim of the Applicant more so, when the execution of a registered agreement for sale entered into between the parties herein in respect of Flat No.603 has not been denied by the RP.

9. On the other hand, the Counsel for the RP has argued that the Applicant had failed to furnish any proof of payments made to the Corporate Debtor in support of his claim before the RP. Counsel for the Respondent/RP submits that the RP was unable to proceed with admitting the Applicant's claim as his powers as RP are restricted to collating and verifying the claims on the basis of the documentary evidence provided by the creditors. However, since the Applicant failed to furnish any documentary evidence in support of his claim, the RP was fully justified in law to reject the claim of the Applicant. Counsel for the RP further submits that it was mandatory for the Applicant to obtain NOC from the financial creditor (i.e. Capri Global Capital Ltd) with which the flat in question was mortgaged by the Corporate Debtor prior to the execution of the agreement for sale with the Applicant. Since no such NOC was obtained, the RP was certainly not in error in rejecting the Applicant's claim.

10. In this regard, the Counsel for the Applicant submitted that the issue of mortgage of the flat in question was never communicated to the Applicant by the RP while rejecting the claim and it is being raked up for the first time by way of a reply to the application of the Applicant. Further, the Counsel for the Applicant submitted that the RP has not annexed even a single document in his reply to prove the factum of the mortgage of the flat in question. Further, the RP has not taken any steps for challenging or setting aside the registered agreement for sale dated 13.01.2016. This shows that

even the RP has not doubted the bona fide of the agreement for sale executed between the Applicant and the Corporate Debtor. Hence, the defence of the RP w.r.t mortgage of the flat in question and failure of the Applicant to obtain NOC from the mortgagee is utterly baseless.

11. Lastly, the Counsel for the Respondent apprised the Adjudicating Authority of the fact that the resolution plan submitted by Planet Builders and Developers was unanimously approved by the members of the CoC at the 13th CoC meeting held on 19th November, 2021 and the Respondent has also filed an I.A. No. 70 of 2022 for approval of the resolution plan which is currently pending before the Tribunal. Counsel for the Respondent further brought to our attention the fact that the claim of the Applicant was rejected by the RP on 16th December, 2019 and the present application impugning such rejection has been filed on 11th August, 2022. The Counsel for the RP submits that there is an unexplained delay of nearly three years in filing the instant application and it has been filed only after the resolution plan was approved by the CoC. Therefore, the RP has stated in his reply to the application that the Applicant has filed the present application with an intent to delay the approval of resolution plan, thereby derailing the CIRP of the Corporate Debtor. Hence, it is submitted on behalf of the Respondent/RP that the present application should be dismissed with exemplary costs upon the Applicant.

12. We have carefully examined the above submissions and we have also meticulously gone through the records.

13. By way of this application, the Applicant herein is impugning the rejection of his claim of Rs. 50,39,125/- (Rupees Fifty Lakhs, Thirty-Nine Thousand, One Hundred and Twenty-Five only) filed with the Respondent in Form CA dated 06.12.2019 under Regulation 8A of the CIRP Regulations. The Applicant herein has, inter-alia, prayed before this Tribunal seeking directions to the Resolution Professional ('RP') of the Corporate Debtor to admit the claim of the Applicant and to include the Applicant in the Committee of Creditors.

14. We find that the RP had rejected the claim of the Applicant by his e-mail dated 16.12.2019 on the ground that the Applicant had not provided a copy of the bank statement. On perusal of the Application, we find that the Applicant has stated at Para 4.3 on page 4 of the Application as under: *"The Impugned Email has been addressed in complete ignorance of the fact that the sale has been executed in favour of the Applicant for which **Applicant has paid the consideration in cash** as is reflected in the receipt annexed to the Sale Deed."*

However, on careful perusal of the receipt annexed to the Sale Agreement, which is found at Page 42 of the Application, we find that the sale consideration of Rs. 27,00,000/- has been paid by the Applicant in cheques, the details of which have been reproduced in the table below:

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<u>Sr. No.</u>	<u>Date</u>	<u>Cheque No.</u>	<u>Bank & Branch</u>	<u>Amount</u>
1.	11/01/2006	366551	Indian Bank, Ulhasnagar	6,00,000/-
2.	14/01/2016	366552	Indian Bank, Ulhasnagar	10,00,000/-
3.	18/01/2016	366553	Indian Bank, Ulhasnagar	11,00,000/-
			TOTAL	27,00,000/-

15. On one hand, we find that the Applicant has pleaded in his application that the sale consideration of Rs. 27,00,000/- was paid in cash, whereas, on the other hand, in the receipt attached with the sale agreement, the sale consideration of Rs. 27,00,000/- is shown to have been paid through cheques. Thus, the case of the Applicant is not at all believable. If the Applicant had genuinely made the payments in cheques, he could have annexed the bank statements along with the claim form while lodging his claim before the RP. Further, there is no documentary evidence on record to show that the cash payments were made by the Applicant to the Corporate Debtor.

16. We also find that the claim of the Applicant was rejected by the RP on 16th December, 2019 and the present application impugning such rejection has been filed on 11th August, 2022. The Resolution Plan has been unanimously approved in the 13th CoC meeting held on 19th November, 2021. The application for approval of the resolution plan has been filed vide I.A. No. 70/2022 on 02-12-2021. If the claim of the Applicant is now admitted, the successful resolution applicant will be facing with the undecided claims after his resolution plan has been approved, thereby making CIRP an endless process. The Hon'ble Supreme Court has observed in the judgment of Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Ors. reported in (2020) 8 SCC 534 as follows:

“A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove.”

Further, the Hon'ble Supreme Court in M/s. RPS Infrastructure Ltd v/s Mukul Kumar & Anr. (neutral citation: 2023 INSC 816) has observed at Para 21 and 22 as under:

“21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel,⁸ the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.”

Hence, after having due regard to the law settled by the Hon'ble Supreme Court, as discussed above, we are of the considered view that the claim of the Applicant cannot be entertained at such a belated stage where the resolution plan unanimously approved by the Committee of Creditors is pending for the approval of the Adjudicating Authority. At this stage, we cannot allow to unleash the hydra-headed monster of undecided claim(s) on the resolution applicant. Hence, the present application is liable to be dismissed.

17. We also observe that the Applicant has not satisfactorily explained the reason for approaching the Adjudicating Authority with this application at such a belated stage. The Applicant has stated in Para 7 of his application that he was not aware of the repercussions of the impugned email and it is only after enquiries he made, he found that the impugned e-mail rejecting his claim would effectively mean that the Applicant would not get the flat in question upon the completion of CIRP of the Corporate Debtor. We find this reason explaining delay to be wholly unsatisfactory. It is well settled proposition that the ignorance of law is no excuse and therefore, the plea of the Applicant that he was unaware of the consequences of rejection of his application, is not tenable in the eyes of law.

18. Even otherwise, as discussed above, the Applicant has no good case on merits. Hence, in view of the facts and circumstances and in view of the above discussions, we are not inclined to allow this application and accordingly, we pass the following orders:

ORDER

19. **I.A. No. 2218 of 2022** in CP(IB) No. 2517 of 2018 **is hereby dismissed** with no order as to costs.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)